IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/03/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.19449 of 1999

R.Paramasivam .. Petitioner

-Vs-

1. Union of India
rep. by its Secretary
Govt. of India
Ministry of Defence
New Delhi.

2. The Col. Commanding Officer
N.E.R.Section
Arty Record Camp
Nasik Road, Maharashtra-422 102. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mrs.Vanathi Srinivasan
A.C.G.S.C.

:ORDER

The petitioner seeks a writ of Certiorarified Mandamus to call for the records relating to the order passed by the first respondent in Lr.No.7(709)/95/D)(Pen.A & AC) Govt. of India, Ministry of Defence, New Delhi dated 31.7.1996 and the consequential order passed by the second respondent in No.14399137/Q/T.VII/2/PEN-2, dated 1.11.1999, to quash the same and to consequently direct the respondents to grant pension benefits to the petitioner herein from the date of discharge from Military service, viz., 19.8.1993.

2.1. The petitioner was enrolled in the Army as Technical Assistant on 13.12.1987 in the Regiment of Artillery at Artillery Centre, Nasik Road Camp. The Medical Board of doctors having found the petitioner physically incapacitated, vide its report dated 17.7.1993 recommended the petitioner to be invalidated out of service for the cause of " Generalised Seizure Code

No.345". He was discharged from service as an invalidated man on 19.8.1993.

2.2. The petitioner, through his advocate, made a representation to the first respondent on 5.4.1994 seeking disability pension under Regulation 173 of the Army Pension Regulations, 1961, which reads as under:
"Regulation: 173 - Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.
The question whether a disability is attributable to or aggravated by military service shall be determined under the Rules in Appendix II."

2.3. The said request of the petitioner dated 5.4.1994 was rejected by the first respondent by proceedings dated 31.7.1996 finding that as per Medical Board's report dated 17.7.1993, the petitioner suffers disability less than 20% and therefore, he is not eligible for the disability pension. The relevant portion of the Medical Board report dated 17.7.1993 reads as follows:
"4. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 2 0% to 100%

Disability (as number in question 1, Part II)
Percentage of disablement
Probable duration of this degree of disablement
Composite assessment (all disabilities)
Generalised Seizure CD No.345
Less than twenty percent 15-19%
Two years
Less than twenty percent 15-19%"

2.4. The petitioner, thereafter, made a representation seeking reinstatement into service, stating that he had fully recovered from illness. The said request was rejected by the second respondent in his proceedings dated 2.8.1999. Further representations were made by the petitioner on 19.8.1999 and 15.9.1999 seeking reinstatement. But the second respondent, by proceedings dated 1.11.1999, rejected the said request of the petitioner.

3. It is trite law that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference, vide United Commercial Bank v. P.C. Kakkar,(2003) 4 SCC 364.

4. In the instant case, the Medical board in its report dated 17.7.1
993 opined that the petitioner was suffering from less than 20% disability,

and such opinion of the Medical Board constituted by the Experts in the field cannot be interfered with by way of judicial review exercising the powers conferred under Article 226 of the Constitution of India. Moreover, as per Regulation 173 of the Regulations, a person who claims disability pension should have a minimum disability of 20%, which the petitioner lacks.

For the reasons aforesaid and in view of the finding of the Medical Board that the petitioner does not suffer from 20% disability, I am of the considered opinion that the petitioner is not entitled to claim the disability pension as per Regulation 173 of the Regulations. This writ petition is liable to be dismissed and the same is dismissed. No costs.

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To:

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